

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JASON EISENHAUER,

Plaintiff,

v.

LG CHEM, LTD.,

Defendant.

Case No. 4:21-CV-964-RLW

JOINT PROPOSED SCHEDULING PLAN

The parties,¹ pursuant to this Court's order, judicial requirements, and local rules of this Court, hereby file the following Joint Proposed Scheduling Plan:

A. Track Assignment:

1. **Defendant's Position:** LG Chem requests a Track 3 assignment for the reason that service of process upon LG Chem was not effected until 4 months after suit was filed, and LG Chem's Answer was not due until 11 months after suit was filed because of motion practice.
2. **Plaintiff's Position:** This case was filed on August 3, 2021. Plaintiff believes that Track 2 is appropriate, and that this case will be ready for trial by February 2023, or within 18 months of filing.

B. Joinder of Additional Parties & Amendment of Pleadings: Any motions for joinder of additional parties or amendment of pleadings shall be filed no later than **September 1, 2022**.

¹ LG Chem, Ltd. ("LG Chem") asserts that it participates in this Joint Proposed Scheduling Plan subject to and without waiver of its personal jurisdiction defense. Plaintiff does not agree that LG Chem's participation is subject to and without waiver of its personal jurisdiction defense. Plaintiff believes that if LG Chem litigates the merits of this case, it waives its right to contest personal jurisdiction. Counsel for the parties met and discussed this matter by video conference on Wednesday, July 7, 2022 and were unable to resolve this dispute.

C. **Discovery Plan:**

1. **Discovery of Electronic Information:** The parties have discussed and agreed that, to the extent it may become necessary for LG Chem to produce in discovery documents that are stored electronically, LG Chem will produce such documents in a reasonably useable form, consistent with Federal Rules of Civil Procedure 26 and 34.
2. **Privileged Information:** The parties do not currently have any issues regarding privilege or protection of documents, but anticipate that private, trade secret, and/or proprietary information, which is confidential or of competitive value, may be subject to disclosure in this action, and which should not be made available to competitors or to the public generally. The parties agree that should a claim regarding trade secrets or other confidentiality protection arise, the parties will attempt to submit an agreed upon Confidentiality and Protective Order to the Court for review and entrance. The parties agree that if a claim of privilege or protection is made, the asserting party will comply with the requirements of Federal Rule of Civil Procedure 26(c).
3. **Initial Rule 26(a)(1) Disclosures:** The parties agree to make all disclosures required by Fed. R. Civ. P. 26(a)(1) no later than **August 15, 2022**.
4. **Phases or Discovery Limited to Certain Issues:**
 - i. **Defendant's Position:** LG Chem believes that discovery should begin with first scheduling an inspection of the incident cell, vaping device, and other materials, which will inform the parties regarding an appropriate scope of discovery. Based on this, discovery may be limited to certain issues.
 - ii. **Plaintiff's Position:** Plaintiff agrees to produce the subject products for inspection at a mutually agreeable time and place, but does not believe that discovery need be conducted in phases. The subjects upon which Plaintiff need conduct discovery include the nature and design of the LG 18650 batteries, all testing conducted on subject batteries, Defendant's manufacture and distribution systems, the reasonably anticipated use of 18650 lithium ion batteries, Defendant's knowledge of whether or not 18650 batteries can explode or catch fire (including the basis of that knowledge), whether or not LG had actual knowledge of this defect, all design considerations by LG to eliminate this problem, LG's knowledge of the electronic cigarette market, the number of sales of 18650 lithium ion batteries, LG's knowledge of lithium ion batteries exploding, all actions taken by LG to respond to the problem of exploding 18650 batteries, and discovery of financial status and/or net worth of LG in support of Plaintiff's claim of punitive damages.

5. **Expert Witness Disclosures:** The parties agree that disclosure shall proceed in the following manner:
- i. Plaintiff shall disclose all expert witnesses and shall provide the reports required by Fed. R. Civ. P. 26(a)(2) no later than **December 1, 2022**,² and shall make expert witnesses available for depositions, and have depositions completed, no later than **January 16, 2023**.
 - ii. LG Chem shall disclose all expert witnesses and shall provide the reports required by Fed. R. Civ. P. 26(a)(2) no later than **February 1, 2023**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **March 15, 2023**. This includes any independent medical exam that could be requested by LG Chem pursuant to the Federal Rules of Civil Procedure.
6. **Limitations of Discovery:** The parties agree to modify the presumptive limit on interrogatories as set forth in Fed. R. Civ. P. 33(a) to allow for thirty-five (35) interrogatories per party. In addition, the parties agree that the depositions of retained experts do not count toward the presumptive limit of ten (10) depositions per side as set forth in Fed. R. Civ. P. 30(a)(2)(A).
7. **Physical and Mental Examinations:** LG Chem reserves its right to request such examinations.
8. **Completion of Discovery:** All discovery shall be completed by **March 15, 2023**.
9. **Other Discovery Matters:** No other matters exist pertinent to the completion of discovery in this case.

D. **Alternative Dispute Resolution:** The parties believe this case is appropriate for alternative dispute resolution. The parties request a referral to mediation be made on or before **January 16, 2023**, and that mediation occur no later than **March 15, 2023**.

E. **Dispositive Motions:** All dispositive motions, including any *Daubert* motions, shall be filed by **March 15, 2023**.

F. **Trial Date and Pre-Trial Deadlines:**

1. Under Track 2 assignment, the earliest date the case should reasonably be expected to be ready for trial is **February 2023**. However, LG Chem requests Track 3

² The parties agree that Plaintiff's non-retained treating healthcare providers are not required to provide Rule 26(a)(2) reports because any such witness is not "retained or specially employed to provide expert testimony."

assignment and believes that the earliest date the case should reasonably be expected to be ready for trial would be **August 2023**.

2. The parties request that a final pre-trial conference be set for no less than ten (10) days prior to the date of trial.
 3. All matters that a party desires to take up at the pre-trial conference, including any motions in limine or deposition designations, shall be filed on or before twenty-one (21) days prior to the pre-trial conference. Any responses to motions in limine, objections to counter designations, and/or counter designations, are due fourteen (14) days prior to the pre-trial conference. Any replies to responses to motions in limine are due 7 days prior to the pre-trial conference.
- G. Trial is expected to last **five (5) days**.
- H. No other matters currently exist pertinent to the scheduling of this case.

THE SIMON LAW FIRM, P.C.

Dated: July 7, 2022

/s/ John M. Simon

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Dated: July 7, 2022

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